

HOUSE No. 2331

By Mr. Straus of Mattapoisett, petition of William M. Straus and others for legislation to provide conservation tax credits. Revenue.

The Commonwealth of Massachusetts

PETITION OF:

William M. Straus	John W. Scibak
James B. Eldridge	Cory Atkins
J. James Marzilli, Jr.	

In the Year Two Thousand and Five.

AN ACT RELATIVE TO TAX CREDITS FOR CONSERVATION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. This Act shall be known as the Massachusetts
2 Land Conservation Incentives Act of 1999.

1 SECTION 2. (a) The Commonwealth of Massachusetts's
2 unique natural resources, wildlife habitats, open spaces, agricul-
3 tural resources, and historic resources are of significant benefit to
4 the state and the public; and

5 (b) The Commonwealth of Massachusetts's unique natural
6 resources and distinctive natural heritage including habitat for
7 plants, animals and natural communities, are being lost at an
8 alarming rate; and

9 (c) Much of the Commonwealth of Massachusetts's unique nat-
10 ural and historical resources and habitats are found on lands
11 which are privately owned; and

12 (d) The legislature desires to encourage private landowners to
13 be stewards of lands which are important habitat or designated
14 natural areas or which contain significant natural, open space, and
15 historic resources; and

16 (e) The Commonwealth desires to complement existing land
17 conservation restriction programs under the Massachusetts Con-
18 servation Restriction Act, as set forth in Sections 31-33 of

19 Chapter 184 of the Massachusetts General Laws, and not dupli-
20 cate them and thereby preserve public financial resources and
21 leverage public expenditures; and

22 (f) The Commonwealth desires to provide private landowners
23 with incentives to encourage protection of private lands for open
24 space, natural resources, biodiversity conservation, and outdoor
25 recreation, agricultural preservation, historic preservation and
26 land preservation purposes.

1 SECTION 3. Definition. The following definitions shall apply
2 to this Act:

3 (a) “Interest in real property” means any right in real property,
4 or improvements thereto, or water including but not limited to a
5 fee simple, easement, partial interest, mineral right, remainder,
6 future interest, lease, license or covenant of any sort, or other
7 interest or right concerning the use of or power to transfer prop-
8 erty.

9 (b) “Land” or “lands” means real property, with or without
10 improvements thereon; right of way, water and riparian rights;
11 easements; privileges and all other rights or interest of any land or
12 description in, relating to or connected with real property.

13 (c) “Public or Private Conservation Agency” means any Massa-
14 chusetts governmental body, or any private not-for-profit chari-
15 table corporation or trust authorized to do business in the
16 Commonwealth of Massachusetts and organized and operated for
17 natural resources, land conservation or historic preservation pur-
18 poses, and having tax-exempt status as a public charity under the
19 U.S. Internal Revenue Code of 1986, as amended, and having the
20 power to acquire, hold and maintain land and/or interests in land
21 for such purposes.

1 SECTION 4. Tax Credit Available. Amend Section 6 of
2 Chapter 62 of the Massachusetts General Laws by adding thereto
3 the following:—

4 (j) Land Conveyed for Conservation and Preservation Purposes.
5 There shall be allowed as a credit against the tax liability imposed
6 by this chapter, an amount equal to 50% of the fair market value
7 of any land or interest in land located in Massachusetts which is
8 conveyed for the purpose of open space, natural resource, and/or

9 biodiversity conservation, or land, agricultural, watershed and/or
10 historic preservation, as an unconditional donation in perpetuity
11 by the landowner/taxpayer to a public or private conservation
12 agency eligible to hold such land and interests therein for conser-
13 vation or preservation purposes. The fair market value of qualified
14 donations made under this section shall be substantiated by a
15 “qualified appraisal” prepared by a “qualified appraiser”, as those
16 terms are defined under applicable Federal law and regulations
17 governing charitable contributions.

18 (1) The amount of the credit that may be claimed by a taxpayer
19 shall not exceed \$50,000 or \$10,000 whichever is less. In addi-
20 tion, in any one tax year the credit used may not exceed the
21 amount of individual or corporate income tax otherwise due. Any
22 portion of the credit which is unused in any one tax year may be
23 carried over for a maximum of five (5) consecutive tax years
24 following the tax year in which the credit originated until fully
25 expended.

26 (2) Qualified donations shall include the conveyance in perpe-
27 tuity of a fee interest in real property or a less-than-fee interest in
28 real property, such as a conservation restriction, preservation
29 restriction, agricultural preservation restriction, or watershed
30 preservation restriction pursuant to Sections 31-33 of Chapter 184
31 of the Massachusetts General Laws. Dedications of land for open
32 space for the purpose of fulfilling density requirements to obtain
33 subdivision or building permits shall not be considered as quali-
34 fied donations under the Massachusetts Land Conservation Incen-
35 tives Act of 1999.

36 (3) Qualified donations shall be eligible for the tax credit herein
37 described if such donations are made to the Commonwealth of
38 Massachusetts, an instrumentality thereof, or a charitable organi-
39 zation described in Section 501(c) of the U.S. Internal Revenue
40 Code of 1986 and which: (a) meets the requirements of
41 Section 509(a)(2) or; (b) meets the requirements of Section
42 509(a)(3) and is controlled by an organization described in
43 Section 509(a)(2).

44 (4) To be eligible for treatment as qualified donations under this
45 Section, land, or interests in lands, must be certified by the secre-
46 tary of the executive office of environmental affairs or the director
47 of the Massachusetts historical commission as fulfilling the pur-

48 poses as set forth in Section 2 of the Massachusetts Land Conser-
49 vation Incentives Act of 1999. The use and protection of such
50 lands, or interests therein, for open space, natural area protection,
51 biodiversity habitat conservation, land preservation, agricultural
52 preservation, historic preservation or similar use and purpose shall
53 be assured in perpetuity.

54 The following definitions shall apply to this section (j):

55 (1) "Interest in real property" means any right in real property,
56 or improvements thereto, or water including but not limited to a
57 fee simple, easement, partial interest, mineral right, remainder,
58 future interest, lease, license or covenant of any sort, or other
59 interest or right concerning the use of or power to transfer prop-
60 erty.

61 (2) "Land" or "lands" means real property, with or without
62 improvements thereon; right of way, water and riparian rights;
63 easements; privileges and all other rights or interest of any land or
64 description in, relating to or connected with real property.

65 (3) "Public or Private Conservation Agency" means any Massa-
66 chusetts governmental body, or any private not-for-profit chari-
67 table corporation or trust authorized to do business in the
68 Commonwealth of Massachusetts and organized and operated for
69 natural resources, land conservation or historic preservation pur-
70 poses, and having tax-exempt status as a public charity under the
71 U.S. Internal Revenue Code of 1986, as amended, and having the
72 power to acquire, hold and maintain land and/or interests in land
73 for such purposes.

1 SECTION 5. Administration.

2 (a) The secretary of the executive office of environmental
3 affairs (Secretary) and the director of the Massachusetts historical
4 commission (Director) may promulgate such rules and regulations
5 as may be deemed necessary to certify eligible projects for treat-
6 ment in fulfillment of the purposes of this Act. The Secretary and
7 Director, upon the three and five year anniversary of the enact-
8 ment of this Act or any renewals thereof shall prepare a report to
9 the Legislature showing the lands protected during such period
10 pursuant to this Act.

11 (b) The division of revenue of the executive office of adminis-
12 tration and finance for the Commonwealth of Massachusetts, in
13 consultation with the Secretary and Director, shall promulgate
14 such rules and regulations as may be deemed necessary to admin-
15 ister the tax incentives provided for in this Act and shall coordi-
16 nate with the agencies referenced in subsection (a) above in the
17 preparation of the report(s) to the Legislature showing the fiscal
18 impact on the Massachusetts Treasury of the credits claimed pur-
19 suant to this Act.

1 SECTION 6. Applicability, Fiscal Limitation and Renewal.

2 (a) The tax credits provided by this Act shall apply to transfers
3 of land or interests therein in taxable years beginning on or before
4 January 1, 2000 and all taxable years thereafter.

5 (b) Any taxpayer claiming a tax credit under this Act may not
6 claim a credit under any similar Massachusetts law for costs
7 related to the same project. A taxpayer may not claim a tax credit
8 under this Act for lands or interests in land, a portion of which
9 constitutes the taxpayer's entire holdings and where the taxpayer
10 has sold or has contracted to sell to the Commonwealth of Massa-
11 chusetts, an instrumentality thereof, or a private conservation
12 agency the balance of such lands or interests in land for open
13 space, biodiversity, land conservation or land preservation pur-
14 poses.

15 (c) Any tax credits which arise under this Act from the dona-
16 tion of land or an interest in land made by a pass-through tax
17 entity such as a trust, estate, partnership, limited liability corpora-
18 tion or partnership, limited partnership, subchapter S corporation
19 or other fiduciary shall be used either by such entity in the event it
20 is the taxpayer on behalf of such entity or by the member, man-
21 ager, partner, shareholder and/or beneficiary, as the case may be,
22 in proportion to their interest in such entity in the event that
23 income, deductions and tax liability passes through such entity to
24 such member, manager, partner, shareholder and/or beneficiary.
25 Such tax credits may not be claimed by both the entity and the
26 member, manager, partner, shareholder and/or beneficiary for the
27 same donation.

1 SECTION 7. Construction.

2 No part or segment of this Act shall be interpreted to in any
3 way alter or amend any permit requirements, reporting require-
4 ments, allocation procedures, or other requirements set forth in
5 any other provision of state law.